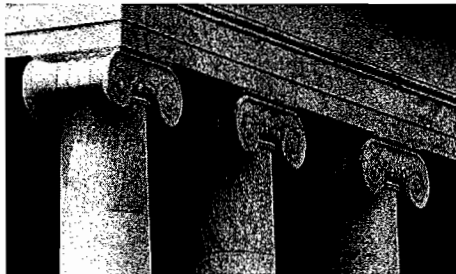
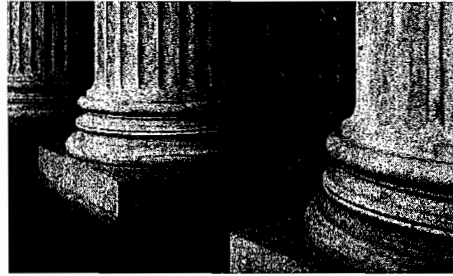


# The State of the Judiciary

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2007

Marsha Ternus  
Chief Justice of the Iowa Supreme Court

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January 10, 2007

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## Iowa Supreme Court

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Marsha Ternus  
Jerry L. Larson  
Mark S. Cady  
Michael J. Streit

David S. Wiggins  
Daryl L. Hecht  
Brent R. Appel

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## Iowa Court of Appeals

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Rosemary S. Sackett  
Terry L. Huitink  
Gayle N. Vogel

Robert E. Mahan  
Van D. Zimmer  
John C. Miller

Anuradha Vaitheswaran  
Larry Eisenhauer  
David L. Baker

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## Chief Judges, Judicial Districts

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District 1 - Alan L. Pearson  
District 2 - Jon Stuart Scoles  
District 3 - Michael S. Walsh  
District 4 - Charles L. Smith, III

District 5 - Arthur E. Gamble  
District 6 - David M. Remley  
District 7 - Bobbi M. Alpers  
District 8 - James Q. Blomgren

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State Court Administrator, David K. Boyd

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### Introduction

Good Morning. Thank you so much for your warm welcome. I am truly honored to appear before you today on behalf of Iowa's judicial branch to speak about our exceptional court system. Before I begin, however, I want to invite all of you to join members of the judicial branch and me for refreshments and conversation downstairs in our historic courtroom immediately following my remarks.

The ceremonial events of this week carry great meaning, not just for those of us who work in state government, but for all Iowans. They serve to remind us of the significance of our endeavor to do what is best and right for Iowa, which is, after all, the reason we are all here. Regardless of our different roles, tenure, political affiliation—or lack of political affiliation—we all made a conscious decision to hold public office, first and foremost, because we care deeply about serving the people of our great state.

This common goal—to do what is best and right for Iowans—is a strong unifying force that serves as the foundation of our working relationships. Naturally, we can share a goal and disagree on how to reach it. But so long as our common goal is our first consideration, we can achieve a great deal to move Iowa forward. I and the other members of the judicial branch look forward to working with you in this spirit.

Now, I turn to the reason we are gathered here this morning: the State of the Judiciary. I regard this address as one of the chief justice's most important duties. This occasion is the best opportunity for the judicial branch to share with you and the people of Iowa our assessment of the state's court system and to let you know what improvements and issues are on the horizon.

Today, I'm pleased to report that our assessment is positive. The judicial branch is ably performing its constitutional and statutory duties. This good report is due primarily to the efforts of the nearly 2000 dedicated individuals who are the judicial branch of government.

Public service inspires and drives their efforts every day. Working together as a team, our judges and professional staff skillfully fulfill our vital mission, which is administering justice according to law, equally to all people. I am immensely proud of our judges and court personnel.

Our capacity to resolve thousands upon thousands of cases efficiently and effectively is also a result of your support and the support of the governor. Together, you have a solid history of providing the resources, statutory procedures and fair compensation required to operate a high caliber court system. We are grateful and trust that you will give the work of the courts similar consideration again this year.

While this good news certainly makes this message easier to deliver—and probably easier for you to receive—there is more to tell you because there is always room for improvement. So today, I intend to discuss some of our efforts to improve the delivery of court services to Iowans. Some improvements are simple changes that are easy to implement; others are multi-faceted and ambitious efforts that will take years to complete. But all are important steps that will serve the best interests of the public.

## **E-filing and Paperless Courts**

Nothing has transformed our service to the public more than information technology and the Internet. In the past few years, we've harnessed the power of technology so Iowans can pay fines, check child support payment records, watch supreme court oral arguments, check criminal backgrounds, read appellate court opinions, track down judgments and liens, and determine court schedules online, 24/7.

Now we're poised to begin our most ambitious undertaking ever—the transformation from a paper-based to a completely paperless court system. We plan to begin by testing electronic filing and paperless procedures in two pilot counties later this year. Once the pilot project testing is completed, we will implement electronic filing in the appellate courts. After that is done, we will gradually add the remaining trial courts. If all goes as planned, we will have E-filing available statewide in five years.

Switching to a completely electronic system will require special court rules. For the past year, a very capable committee has worked diligently on the procedural rules we will need to implement and manage a paperless system, rules that will be released for public comment tomorrow. I want to take this opportunity to publicly acknowledge the thoughtful and thorough work of this committee, chaired by Judge Robert Hutchison of Des Moines and attorney David Beckman of Burlington.

Our transformation into a paperless court will dramatically modernize court operations and revolutionize public access to the courts. Just imagine the benefits. Iowans will be able to search and view entire court files online, around-the-clock, from the convenience of their home, office, or local library. E-filing means no more last minute dashes or long drives to the courthouse to file papers. Judges, court staff, lawyers, litigants and others will have immediate and simultaneous access to court files. The pressure on clerks' staff to hunt down files and make copies will vanish. And local governments will be relieved of the cost of leasing more space in which to warehouse paper files.

## **Information Security and Privacy Concerns**

While a paperless operation will produce substantial benefits to court staff, court users, and the public, it will also produce heightened concerns about information security and personal privacy. Court records routinely contain personal identification information and other material of a personal or sensitive nature. Although most of this information is presently available to the public, it is, for all practical purposes, unseen. The task of finding and accessing a paper record in one file among thousands of files located in one of our one hundred courthouses impedes widespread dissemination and misuse of these records. But after the judicial branch shifts to electronic filing and record management, court records will be readily available for unconstrained, global public consumption. Individuals involved in court proceedings will be more vulnerable to identity theft and prying eyes. Such universal and easy access is a concern not only for the courts and other government offices that use or are contemplating the use of online access to records, but also for the citizens of Iowa who value their security and their privacy.

I want to emphasize that the courts protect and will continue to protect information that is confidential by law; but current laws do not bestow confidential status on most of our records, which include, among other items, birth dates, addresses, children's names, and financial account information. There is a valid reason to restrict public access to personal identification information, financial account information and other facts that could be used by identity thieves, as well as certain information that could expose people, such as minor children and victims, to other types of harm. Protecting this information will require a combination of court rules and legislative action, as well as diligence on the part of attorneys and litigants.

The first safeguard is simple. Lawyers and litigants should simply omit personal information from papers and exhibits when such information is not required by law or is not germane to a legal issue in a case. To instill this safeguard into our procedures, the supreme court recently adopted new rules to discourage people from filing information the court does not need.

But how do we protect personal information that is material to a proceeding or required by law? In this situation, we propose additional court rules that will apply to information provided to the court in electronic format. First, we propose that certain information, such as birth dates, children's names, financial account numbers and social security numbers, be submitted on a separate, protected information form that will be kept confidential. Second, when it is necessary to refer to or use protected information in a court document, a party would provide only a portion of the information. For example, if a minor child's name is necessary, parties would use only the child's initials. Or if a financial account number is pertinent, the party would use only the last four digits. We need and recommend your approval of a statutory amendment that will give the judicial branch the authority to protect personal information in this manner.

Now, what about other privacy concerns that will naturally arise with online access to court records? Court records contain all sorts of personal and sensitive information, such as tax returns, employment history, medical records, financial assets, and even the details of family disputes. Should information of this nature that courts receive and maintain in electronic

format be available to the public to the same extent as it is currently available in our paper-based system? All Iowans value openness in government, but perhaps the balance between access to public information that explains government action and the protection of personal information citizens consider private should be reexamined. This issue requires a policy decision of tremendous importance to the citizens of this state. It is a policy decision properly to be made by you—the legislature. We hope you will give this issue your full attention this legislative session.

## **Improving Jury Service**

Now I turn to another example of our plans to improve service to the public—a plan that focuses on the people who serve the state by answering the call to jury duty. Each year thousands of Iowans from many walks of life take time away from their families and jobs to fulfill this important civic function. They are essential to our justice system, and they are truly unsung heroes.

We recognize that their time is valuable, and so over the years we have adopted a number of measures to make jury service more convenient and less time-consuming. Later this year, we will begin another juror-friendly service—E-juror, a web-based program that will enable people summoned for jury service to respond to and complete the summons online. This feature will also allow jurors to contact court staff directly by email when they have questions about their service. E-juror will join our growing list of online services that connect the courts with the people.

While time-saving measures and convenient services make it easier for Iowans to fulfill their civic duty, these steps are only part of what we can and should do for citizens who take time from their normal responsibilities to perform this important function. As you know, we pay jurors a small amount for each day of service, a mere \$10 per day. There is one exception. With the aid of the statutory authority you gave us in 2005, we recently established by court rule a pay differential for jurors who serve on long trials. Rather than the basic \$10 per day, jurors receive \$50 per day after the seventh day of service. It is now time to take the next logical step and increase the basic fee.

For several reasons, we recommend that you increase the basic fee for jury duty from \$10 per day to \$30 per day. According to information from the National Center for State Courts, Iowa's \$10 fee is near the bottom of the range of fees paid by state courts. Iowa's fee has remained unchanged for thirty-three years. A \$10 fee in 1974, when the current fee was set, adjusted for inflation, would be worth more than \$40 today. While our recommendation of \$30 per day is admittedly less than the lost wages and child-care costs incurred by many jurors, we believe it is a reasonable sum. It will at least lessen the financial burden borne by Iowans performing this valuable public service. We estimate that the total cost of this increase will be around \$2 million a year. But the Jury and Witness Revolving Account should be able to absorb the additional expense for the next few years. Please recognize the personal sacrifice, financial and otherwise, made by jurors every day by paying them a more reasonable sum for their service to the public.

## **Assisting Self-Represented Litigants**

Now I want to talk a bit about the efforts of the judicial branch to address the needs of self-represented litigants, a growing category of court customers. Whether people represent themselves as a matter of choice or out of necessity, they have a right to access court services without an attorney. But in all honesty, the vast majority of litigants who represent themselves are ill equipped to effectively serve as their own legal counsel. Typically, they are unfamiliar with the law and unfamiliar with court procedures. Their lack of knowledge and skill affects more than the outcome of their cases—it places additional burdens on an already overtaxed court system because litigants who represent themselves frequently expect judges and court employees to help them with their lawsuits, which diverts valuable resources from other cases and public services. Rather than ignore this difficult issue, we are taking concrete steps to accommodate the needs of these litigants.

### **Forms and Instructions**

Our hard-working and talented Pro Se Forms Advisory Committee, chaired by Judge Patrick Grady from Cedar Rapids and Iowa City attorney Dan Bray, is putting the finishing touches on our first two sets of easy-to-use-forms and instructions for litigants who represent themselves. One set is designed for divorcing couples without children, which is usually the simplest type of dissolution. Another set is designed to help parents who seek modification



of child support orders—a process that I know is of great concern to many of your constituents. Once the forms and instructions are finished, the court will make them available in our clerks' offices and on our website. We do not plan to stop with the introduction of these forms, however. Over time, we intend to adopt more forms and instructions to assist self-represented litigants with other court procedures. These efforts are important because they will enhance court access for Iowans who cannot afford an attorney.

### **Unbundled Legal Services**

Do-it-yourself forms and instructions are immensely helpful to Iowans who choose to represent themselves in court, but forms can never be a substitute for professional legal advice. Realistically, however, many people cannot afford the expense of hiring an attorney to represent them in court. To assist in meeting the legal needs of Iowans, we have now proposed amendments to our rules of civil procedure and the rules governing attorneys' ethical obligations to encourage limited-scope legal assistance, a practice referred to as unbundled legal services. These changes will make it easier for a lawyer to perform a particular task, such as drafting a petition or attending one hearing on behalf of a client, without requiring the lawyer to handle every aspect of a case from beginning to end. The end result is more affordable legal representation for the citizens of Iowa, which we hope will encourage more people to obtain legal assistance.

## **Children and the Courts**

I next turn to the most important matter I want to discuss with you: our efforts to improve the lives of children who come to court because they need treatment or protection—Iowa's most vulnerable citizens. Within this context, I will address two topics: our efforts to improve the lives of foster children who are waiting for permanent homes and our deep concern about the well-being of children who are waiting for treatment of mental health problems. Make no mistake: Whatever we can do to help these children will benefit not only these innocent kids, but also the public in general because we can reduce the odds that neglected children will become delinquent juveniles and adult criminals.

### **Children Waiting for Treatment**

I begin with children waiting for treatment. In 2005, you narrowed the statutory definition of “child in need of assistance.” This small, well-intentioned amendment has resulted in a serious unexpected problem.

The previous definition of “child in need of assistance” allowed a juvenile judge to order treatment for a child who suffers from a serious mental illness or disorder, or emotional damage and whose parent, guardian or custodian is unwilling *or unable* to provide treatment. The 2005 amendment struck the two words “or unable.” The purpose of the amendment was to enable parents who do not have the financial means to obtain mental health treatment for their children to obtain it at state expense without being compelled to relinquish custody of their child. The avoidance of unnecessarily placing children in state custody is a laudable goal, and I commend you for it. However, a cap on the number of people who can be served under the new procedure means many children are not receiving the treatment they need.

I understand that more than 300 children are waiting for such treatment. Our juvenile judges tell me that too often children wait too long. Their parents are at wit’s end. And while they wait, the children’s problems worsen. Many of these children get into trouble and end up in court for delinquency. We witness this problem every day in the courts of this state.

The Director of the Department of Human Services and I have discussed this problem. The department is also concerned that more children need help and recommends additional funds to raise the cap so another 100 children can be treated. This recommendation is certainly a step in the right direction, and we support it. But what about the other 200 or so children who need help now? Placing an artificial cap on the number of children who can be treated may serve a budgetary goal, but it does not meet the needs of our most vulnerable children. Without treatment now they will not have the tools to grow into responsible citizens. It is your choice to make. We urge you to provide funds for the treatment of children suffering from a mental disorder or illness at a level that can realistically meet the need for such treatment.

### **Children Waiting for a Permanent Family**

Our concerns about the welfare of children do not stop here. We are enormously concerned about the lives and the futures of children in foster care. As you know, a foster child is a child who has been removed from his or her home and is living in the care of the state—either in a foster home, a group residence or an institution.

In Iowa, just over 5000 children, about the number of children enrolled in the entire Marshalltown School District, live in foster care. While most of us think of foster children as those who have been abused, most foster children are in the system because of neglect. Their parents simply cannot provide a safe home with adequate parental supervision. The average age of these children is eleven years, they spend about eighteen months in foster care, and they live in two or three placements. It is well documented that the profound uncertainty caused by the frequent and generally unexpected relocation of a foster child from one unfamiliar home to another disrupts their emotional development in ways that plague them well into adulthood.

Foster care is intended to be a temporary haven for children, not a permanent home. But tragically, many foster children never find a permanent home. Instead, they “age out” when they become eighteen years old or graduate from high school. According to Casey Family Programs, young adults who emerge from foster care have higher rates of unemployment, poverty, mental health problems, unplanned pregnancies, homelessness, public assistance, and incarceration. As you can see, the impact of foster care drift extends beyond the children—our society pays a high price.

This brings me to a point that should be obvious: Society as a whole benefits when we expeditiously find foster children safe, permanent homes with good families because, when we do, it is more likely that these children will become not only well-adjusted, responsible adults—they will become good parents to our future children.

I’m confident that all of us in government who share responsibility for the child welfare system recognize the importance of finding these children safe and permanent homes without undue delay. But as we all know, every aspect of our child welfare system is

overburdened and undervalued. Iowans like to say that we put our children first; it's now time to show that we mean it.

### **Children's Justice Initiative**

Recently, the Iowa Supreme Court and the Judicial Council embarked on a mission to make court oversight of child welfare cases a top priority. Let me emphasize that this program will not end once we have achieved a specific set of results nor will it end on a particular date. This initiative represents a permanent, ongoing, fundamental cultural change that will reflect our conviction that the interests of children must come first in our justice system.

As a springboard for this change, we have begun an effort that has been christened: "The Children's Justice Initiative." We are fortunate to begin this initiative with a solid foundation already in place and a detailed blueprint in our hands.

The foundation for our efforts is our own highly regarded Court Improvement Project. For the past decade, our Court Improvement Project committees and staff, working with our dedicated juvenile judges, have developed many improvements that enhance the timeliness and quality of child welfare proceedings. The talented staff and organization of the Court Improvement Project is well-suited to support our new initiative.

The blueprint for our Children's Justice Initiative is the landmark report of the 2004 PEW Commission on Children in Foster Care. The PEW Commission is a national, nonpartisan entity dedicated to accomplishing sweeping broad-based reforms of our nation's child welfare system. Among other things, the commission calls for:

- Collaborative efforts between courts, child welfare agencies, and others,
- A dedicated corps of specially trained judges committed to children and families,
- The adoption of best practices in dependency courts to ensure courts make well-informed decisions that place children in permanent homes as soon as possible,
- Steps to attract and retain a pool of highly qualified attorneys to represent parents and children,
- Multi-disciplinary, cross-system training for all participants, and
- More resources for the child welfare system.

The PEW Commission's report will inspire, guide and inform our efforts. Therefore, we want to share this report with you. We will provide a summary of the PEW Commission report to you later today. I hope you will find the time to read it, as it is vitally important for everyone holding state office to understand the needs of our most vulnerable citizens and what we all can do to address those needs.

Our first step to improve outcomes for children in foster care is focused on our own procedures and practices in dependency court. I will describe two specific actions we have already undertaken.

### **Assessments**

With the assistance of our Court Improvement Project staff, we are assessing the effectiveness and timeliness of court practices in dependency cases in seventeen counties within the next year. The assessment involves file reviews, on-site visits of juvenile court hearings, interviews of participants, and surveys. Our auditors compile all of the information into a report, which they share with a community team that develops plans for improvements. Sometimes only a small change in local culture or routine can have an enormous and positive effect on the well-being of foster children.

### **One Judge/One Child**

Our most significant improvement involves directing more judicial resources to the juvenile court to implement a practice we refer to as the one judge/one child model. The one judge/one child concept is simple: one judge presides over every juvenile court proceeding involving a particular child. This practice allows the judge assigned to a child's case to become thoroughly familiar with that family's unique set of problems. As a result, hearings are less likely to be postponed and court decisions are better informed and more consistent. Another important benefit of this practice is that the child sees at least one familiar face—the face of the judge—the entire time the child is in foster care. For older children who come to court proceedings, their judge may be the only constant figure in their life.

You may be asking yourselves why such an obvious and seemingly simple practice was not followed until now. It's a matter of resources, case scheduling practices, and priorities. While some courts have used the one judge/one child model for a number of years, now, under the leadership of our chief judges, we are committing the necessary resources so children throughout the state receive the same level of judicial service, attention and skill. I am proud to announce that we have a cadre of exceptional judges who have volunteered to take on this difficult assignment. Their commitment to the well-being of our state's most vulnerable children is admirable. In addition, each judicial district is modifying its scheduling practices and assignments to devote more attention to dependency cases. These changes have not been easy, and I want to take this opportunity to thank the judges and court administrators who have worked so hard to implement the best practice of having one judge preside over all proceedings involving one child. The lives of children in foster care will be better for these efforts.

I forewarn you, however, that our significant realignment of judicial resources may create delays in other cases, particularly civil cases, and thus raise concerns of some of your constituents. But we believe the benefits derived from this realignment far outweigh any disadvantages. Certainly the need to find a permanent, safe home for these innocent and vulnerable children must be our priority.

### **Collaboration**

While the first phase of the children's justice initiative focuses on court procedures, over time we will expand the scope of our reform efforts in keeping with the recommendations of the PEW Commission. Collaboration among courts and public agencies on both state and local levels is essential to accomplish the far-reaching reforms we envision. To jump start our collaboration with others, the judicial branch is sponsoring a statewide summit in March. This summit will bring together representatives of all branches of state government, including state and local public officials, attorneys, social workers, and other stakeholders, to foster communication and spark wide-scale improvements in the management of child-in-need-of-assistance cases. We invite you to attend. Your participation, even if it is just for a short time, will send a strong message that we are united in our commitment to improve the outcomes for foster children.

**Legislative Action to Help Children**

I know you are concerned about the lives and futures of children in foster care. Your actions last year to provide financial assistance to children after they age out of the foster care system illustrates your commitment. The assistance you provided will have a beneficial and lasting effect on the lives of these children. Now I have several recommendations for more improvements that require your action.

First, we request that you provide additional resources to the juvenile courts, including two new district associate judges, associated support staff and more juvenile court officers and technicians. These resources will increase our capacity to effectively address the rising need for more juvenile court services and more juvenile judges.

We also whole-heartedly support the expansion of Iowa's Court Appointed Special Advocate program, or CASA. CASA recruits, trains and assigns volunteers who serve as guardians ad litem in child welfare cases. CASA volunteers, who are themselves extraordinary public servants, provide the court with in-depth information about a child. They serve as an extra set of eyes and ears for the judge. The Iowa Child Advocacy Board seeks funds this year to take the CASA program statewide. We think the expansion of the CASA program would be a wise investment that will pay dividends in the form of better outcomes for kids, and we encourage you to support the Board's request.

Finally, we urge you to raise the hourly rate for court-appointed attorneys who handle juvenile cases. Competitive pay is absolutely essential for the state to recruit and maintain a sufficient number of well-qualified attorneys to represent children and parents involved in juvenile court. The state pays attorneys who represent drunk drivers more than we pay attorneys who represent our most vulnerable children. What does that say about our priorities? Do we really believe that the legal representation of children is less important? We urge you to raise the compensation for lawyers who represent children in juvenile court.

The judicial branch can accomplish a great deal to improve the lives and prospects of foster children. But we can accomplish a great deal more with your backing—for it is up to you to

marshal the resources and tools we need to ensure the well-being of these kids. I ask you to take this responsibility to heart when you set your priorities. When we invest in their future, we invest in the future of Iowa.

## Conclusion

Now, with the future of Iowa firmly in mind, I come to the conclusion of my remarks.

There are many considerations that draw us to public service. For me, and probably, for many of you, the greatest consideration is the opportunity, indeed the privilege, to shape the future for the common good. Speaking on behalf of the Judicial Branch of Iowa, we intend to make the most of this privilege.

And so, today, I have given you a report that is focused on our mission, focused on the public and focused on the future. The state of the judiciary is good, and we are fully resolved to make it better. All of the efforts and plans I have mentioned—E-filing and online access to court records, E-juror, raising the jury fee, forms for self-represented litigants, unbundled legal services and the Children’s Justice Initiative— will move Iowa forward.

But before I close, I appeal to you one more time to do everything in your power to increase the chances that foster children find a permanent and loving family. I hope I have convinced you this objective is of vital importance. If I have not, let me explain it on a more personal level. I am confident every parent in this room, including my husband and me, would agree that the most important task they have ever undertaken is raising their children. We know children are shaped and influenced for the rest of their lives by the successes and failures we have as parents.

Our responsibility as a society is no less important. We have an obligation to parent foster children—to focus our full attention and support in an effort to successfully find them a permanent home where they will be loved, nurtured, protected and raised to be responsible and productive adults. The novelist Graham Greene wrote: “There is always one moment



in childhood when the door opens and lets the future in.” Together, we can open the doors to a bright future for Iowa’s foster children. Let’s start now.

Thank you.